

# PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number

Q96241

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on \_\_\_\_\_

Application Number  
10/588,089

Filed  
May 25, 2007

Confirmation Number: 4020  
First Named Inventor  
Yasuaki FUJITA

Signature  
Typed or  
printed name

Art Unit  
3617

Examiner  
Russell D STORMER

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

- ☒ The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

## CORRESPONDENCE ADDRESS

Direct all correspondence to the address for SUGHRUE MION, PLLC filed under the Customer Number listed below:

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23373

CUSTOMER NUMBER

I am the

☐ applicant/inventor.

/ Stacey A. Fluhart /

Signature

☐ assignee of record of the entire interest. See 37 CFR 3.71.  
☐ Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)

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Registration number if acting under 37 CFR 1.34 \_\_\_\_\_

January 25, 2011

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below\*.

☒ \*Total of 1 form is submitted.

**PATENT APPLICATION**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of

Docket No: Q96241

Yasuaki FUJITA

Appln. No.: 10/588,089

Group Art Unit: 3617

Confirmation No.: 4020

Examiner: Russell D STORMER

Filed: May 25, 2007

For: CORELESS RUBBER CRAWLER TRAVELING DEVICE

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

**MAIL STOP AF - PATENTS**

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

Pursuant to the Pre-Appeal Brief Conference Pilot Program, and further to the Examiner's Final Office Action dated October 25, 2010, Applicant files this Pre-Appeal Brief Request for Review. This Request is also accompanied by the filing of a Notice of Appeal.

Applicant turns now to the rejections at issue:

**Claims 1-5, 8, and 9 are rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over JP 2002-127955 (hereinafter "Komatsu '955") in view of JP 3-19785 (hereinafter "JP '785").**

It is respectfully submitted that the Examiner's rejection is in error because it would not have been obvious to have combined Komatsu '955 and JP '785 to arrive at the claimed combination, as discussed below.

Applicants have argued that JP '955 does not disclose any stepped portions and that JP '785 only discloses a stepped portion (and consequently an upper stage surface and lower stage

surface) on one outer side of the roller. Thus, neither of the references disclose or suggest providing stepped portions on both sides of the tracker roller. The Examiner has responded that JP '785 is a modifying reference, and therefore Applicants prior arguments are not proper for an obviousness rejection (see Office Action, page 4). On the contrary, Applicants' prior arguments relating to JP '785 are relevant to the rejection over Komatsu '955/JP '785, in that based on the argument, the combination of Komatsu '955 and JP '785 would not result in both sides of the track having the stepped portions.

It appears that the Examiner may be alleging that it would have been obvious to have used stepped portions on both sides of Komatsu '955 instead of using the reduced diameter portions 15, i.e., instead of the chamfer. **However, the stepped portion and the chamfer are not interchangeable.**

The stepped portion of JP '785 and the chamfer of Komatsu '955 each have different technical advantages. Komatsu '955 discloses that when the rubber belt 2 bends around an outer edge of the wheel 10, a large stress occurs at a location H where the belt and the corner of the wheel 10a meet (see paragraph [0004]). That is, the chamfer of Komatsu '955 has an advantage of reducing or preventing a selva ge cut.

On the other hand, JP '785 is silent with respect to the technical effects of the stepped portion. However, if the chamfer of Komatsu '955 is substituted with the stepped portion of JP '785, prevention of the selva ge cut cannot be obtained from this substitution. That is, when an end portion of the rubber crawler runs on a rock and the like and a force or load is applied to the end portion of the rubber crawler which is outside of an outside end portion of the tracker roller, a clearance gap formed between a surface of the tracker roller at an outside portion thereof and

an inner peripheral surface of the rubber crawler disappears due to deformation of the rubber crawler end portion. As a result, there remains the risk that the rubber crawler may be bent to an extreme degree at the outside end portion of the tracker roller. As such, a salvage cut may occur, and the advantages resulting from Komatsu '955 are not obtained.

Moreover, the crawler of JP '785 is provided with a metal core, and it is generally understood by those skilled in the art that the stepped portion provided on the crawler equipped with the metal core does not exert any salvage cut preventing effect due to a high rigidity of the metal core. Therefore, one of ordinary skill in the art would not have been led to have replaced the chamfer of Komatsu '955 with the stepped portion of JP '795. In view of this, it appears that the Examiner may be engaging in improper hindsight to combine the cited references in a manner to arrive at the claimed combination. This is in error.

In light of the above, it would not have been obvious to have combined the cited references to arrive at the claimed invention which includes, among other features, "wherein upper stage surfaces are formed at the central portion of the inner peripheral surface of the rubber elastic body, and lower stage surfaces are formed at outer sides of the inner peripheral surface of the rubber elastic body in the widthwise direction."

In addition, Applicants have argued that the references do not disclose or suggest the claimed range of contact area of 30 to 70 %, in particular because drawings cannot be relied upon for proportions if they are not to scale. The Examiner alleges that while FIG. 4 of JP '785 may not be used to define exact dimensions, it may be evaluated for what it reasonably discloses and suggests which, according to the Examiner, includes a contact area that is approximately 50% of the length of the roller (Office Action, page 4).

It is submitted that even if Komatsu '955 were modified to instead include stepped portions as a replacement of the chamfers, those of ordinary skill in the art would form the stepped portions to have a size in the widthwise direction that is similar to the size of the chamfers, which would result in a contact surface less than 30 to 70% (see the contact area of Komatsu '955). Accordingly, even if one were to modify Komatsu '955 based on JP '785, it would not result in the claimed combination in which the stepped portions result in a contact area in the range of 30% to 70% with respect to the area of the outer surface of the tracker roller.

In addition, in JP '785, the outside tracker roller, formed by a resilient material such as rubber or the like, is detachably mounted outside the inside tracker roller. As apparent from the description in the specification and drawings (e.g., FIG. 3), the inside tracker roller mainly receives the load, i.e., weight, of a vehicle body. That is, contrary to the claimed invention, not only is the contact area of the endless inner periphery rolling contact surface with the outer surface of the tracker roller that sandwiches the left and right sides of rubber projection, not within the range of 30% to 70% with respect to the area of the outer surface of the tracker roller, but the stepped portion is provided at portions corresponding to the outside tracker roller portion comprising the resilient material. Therefore, as is apparent, the object and the technical effect of JP '785 are different from those of the claimed invention.

Thus, combining the cited references would not result in the claimed contact area in the range of 30% to 70%.

In view of the above, it is respectfully submitted that the rejection of claim 1 is in error because it would not have been obvious to have combined the references in a manner that would result in "wherein upper stage surfaces are formed at the central portion of the inner peripheral

surface of the rubber elastic body, and lower stage surfaces are formed at outer sides of the inner peripheral surface of the rubber elastic body in the widthwise direction” or “wherein a contact area of the endless inner periphery rolling contact surface with the outer surface of the tracker roller in a fixed widthwise region on respective left and right sides of the tracker roller is in the range of 30% to 70% with respect to the area of the outer surface of the tracker roller.”

Accordingly, withdrawal of the rejection of claim 1 over Komatsu ‘955 and JP ‘785 is respectfully requested.

Claims 2-5, 8, and 9 stand or fall with claim 1.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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